

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LORI M. METZSCH,)	
)	8:02cv592
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	
)	
AVAYA, INC.,)	
)	
Defendant.)	

This matter is before the court on the following pending motions: (1) filing no. 335, the Motion for Contempt and Sanctions filed by the plaintiff, Lori M. Metzsch; (2) filing no. 338, the plaintiff's Motion for Issuance of Order to Correct Court Record; and (3) filing no. 340, the Motion to Dismiss filed by the defendant, Avaya, Inc. As a preliminary matter, the plaintiff's motions are denied as completely without merit. The defendant has not disobeyed any order of the court (filing no. 335). Also, it is irrelevant what time of day the plaintiff filed her motion for stay (filing no. 338).

As for the defendant's Motion to Dismiss, while the motion has merit, I doubt that I have jurisdiction to issue any order which would interfere with the plaintiff's pending appeal. Unlike filing nos. 335 and 338, revocation of the plaintiff's in forma pauperis status on appeal and the dismissal sought by the defendant could affect the appeal. The plaintiff's appeal preceded the defendant's motion and divested this court of jurisdiction to interfere with the subject matter of the appeal. However, in all other respects, this case is permanently and forever closed, unless the United States Supreme Court rules otherwise.

THEREFORE, IT IS ORDERED

1. That filing no. 335, the plaintiff's Motion for Contempt and Sanctions, is

denied;

2. That filing no. 338, the plaintiff's Motion for Issuance of Order to Correct Court Record, is denied; and

3. That filing no. 340, the defendant's Motion to Dismiss, is denied.

DATED this 22nd day of September, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge